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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1110

GRAND LODGE HALL ASSOCIATION, I. O. O. F. OF INDIANA, A CORPORATION, ET AL.,

Appellants,

vs.

RALPH F. MOORE, AS AUDITOR OF MARION COUNTY, INDIANA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

CLEON H. FOUST,
Attorney General of Indiana;
FRANK E. COUGHLIN,
First Deputy Attorney General;
WINSLOW VAN HORNE,
Deputy Attorney General;
KARL J. STIPHER,
Deputy Attorney General.

LOUIS B. EWBANK,
Of Counsel.

INDEX

Subject Index

	Page
Statement opposing jurisdiction	1
The record does not present for decision any substantial federal question	1
Appellants' contentions are foreclosed by previous decisions of this Court which support the decision of the Supreme Court of Indiana in this case	2
The decisions relied upon by appellant as presenting a substantial federal question are not in conflict with the decision of the Supreme Court of Indiana in this case	3
To constitute a valid irrevocable contract of exemption from taxation there must be shown a clear intention to do so and in case of ambiguity this Court will follow the decision of the state court unless manifestly wrong	5
Summary	7
Motion to dismiss or affirm	9

Table of Cases Cited

Chicago Theological Seminary v. *Illinois*, 188 U. S. 662	6
Christ Church v. *Philadelphia County*, 65 U. S. 300, 16 L. Ed. 602	3
Grand Lodge F. and A. Masons of Louisiana v. *New Orleans*, 166 U. S. 143	3
Hale v. *Iowa Bd. of Assessment*, 302 U. S. 95, 82 L. Ed. 72	6
Home of the Friendless v. *Rouse*, 8 Wall. 430, 19 L. Ed. 451	4
New York ex rel. Clyde v. *Gilchrist*, 262 U. S. 94, 67 L. Ed. 883	6
Northwestern University v. *People*, 99 U. S. 309, 25 L. Ed. 387	5

Page

Piqua State Bank v. *Knoop*, 16 How. 369, 14 L. Ed. 977 3
Providence Bank v. *Billings*, 4 Pet. 514 6
Puerto Rico v. *Russell & Co.*, 315 U. S. 624 6
St. Anna's Asylum v. *New Orleans*, 105 U. S. 362, 26 L. Ed. 188 5
Salt Company v. *East Saginaw*, 80 U. S. 373, 20 L. Ed. 611 2
Seton Hall College v. *Village of S. Orange*, 242 U. S. 100 6
Washington University v. *Rouse*, 8 Wall. 439 4
Wells v. *Savannah*, 181 U. S. 531 6
Wisconsin & Michigan R. Co. v. *Powers*, 191 U. S. 379, 48 L. Ed. 229 2

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Appellants,

vs.

RALPH F. MOORE, AS AUDITOR OF MARION COUNTY, INDIANA; FRANK P. HUSE, AS TREASURER OF MARION COUNTY, INDIANA; VICTOR R. JOSE, AS ASSESSOR OF MARION COUNTY, INDIANA; ROY T. COMBS, AS TOWNSHIP ASSESSOR OF CENTER TOWNSHIP, MARION COUNTY, INDIANA; OTTO WULFMAN, PETER A. BECZKIEWICZ AND WALTER KLEVE, CONSTITUTING THE STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA,

Appellees

STATEMENT OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THIS COURT

The record does not Present for Decision any Substantial Federal Question.

A

Appellants' Contentions Are Foreclosed by Previous Decisions of This Court Which Support the Decision of the Supreme Court of Indiana in This Case.

Appellants' assignments of error in substance claim that a provision of a general statute providing for the incorporation of foundation or holding companies for religious, educational or charitable purpose, and under which appellants were incorporated, exempting property held by them from taxation constituted a contract which could not be impaired by the State of Indiana. This question has been before this court on numerous occasions and upon facts simliar to those in this case, this court has held that such a provision in such a statute does not constitute a contract.

In the case of *Wisconsin & Michigan R. Co.* v. *Powers* (1903), 191 U. S. 379, 48 L. Ed. 229, this court held that a provision of a general statute of the State of Michigan which exempted from taxation any railway company hereafter building and operating a line of railroad within that state north of parallel forty-four of latitude until the same has been operated for the full period of ten years, did not constitute a contract so as to prohibit the State of Michigan from taking away that exemption before the expiration of the ten year period. Justice Holmes, who wrote the opinion, held there was no contract because of a lack of consideration therefor and also upon the broad ground that the legislature was not making promises in the statute but framing a scheme of public revenue and public improvements; that it merely indicated a course of conduct to be pursued until its views of policy changed.

Likewise, in the case of *Salt Company* v. *East Saginaw* (1872), 80 U. S. 373, 20 L. Ed. 611 this court held that a

provision of a general statute exempting from taxation the property of corporations now formed or hereafter formed for the purpose of boring for and manufacturing salt did not constitute a contract so as to prohibit the state from taking such exemption away.

Also, in the case of *Grand Lodge F. and A. Masons of Louisiana* v. *New Orleans* (1897), 166 U. S. 143 this court held that a provision of a statute exempting from taxation the hall of the Grand Lodge of F. and A. Masons so long as it was occupied by such lodge as a lodge hall did not constitute a contract so as to prevent the State of Louisiana from taking such exemption away, even though the recipient of such an exemption may have incurred expense on the faith of such exemption.

To the same effect is *Christ Church* v. *Philadelphia County* (1861), 65 U. S. (24 How.) 300, 16 L. Ed. 602.

The principles of the foregoing cases apply directly to the instant case and support the decision of the Indiana Supreme Court that the exemption from taxation contained in a general statute under which all foundation or holding companies might incorporate for religious, educational or charitable purposes did not constitute a contract but only indicated a course of conduct to be pursued by the legislature until its views of policy on taxation changed.

B

The Decisions Relied upon by Appellant as Presenting a Substantial Federal Question Are Not in Conflict With the Decision of the Supreme Court of Indiana in This Case.

The case of *Piqua State Bank* v. *Knoop* (1853) 16 How. (57 U. S.) 369; 14 L. Ed. 977 is clearly distinguishable from the present case. There this court declared invalid a statute of Ohio which sought to change the tax rate appli-

cable to banks incorporated under the law of that state. The court held that the provision of the statute under which such banks were organized, providing for taxation of net profits of banks at the rate of 6% in lieu of all other taxes, was a contract, and that such banks could not be taxed any other way. However, in that case Justice McLean, who wrote the majority opinion, pointed out that such provision of the law for years had been construed by the executive authorities of Ohio, the banks, the profession, the bench and by the public as constituting a contract (p. 378, 381).

He also indicated (p. 382) that there had been unsuccessful attempts to induce banks to organize in Ohio without a compact as to taxation and that this provision of the law was enacted to correct this situation. Finally, this case at least provided for some taxation whereas the instant case, as contended by appellant, would prevent any taxation of appellant and many others in a like situation. The foregoing elements clearly point the distinction between the Ohio case and the case now before this court.

The cases of *Home of the Friendless* v. *Rouse* (1869) 8 Wall (75 U. S.) 430, 19 L. Ed. 451; and *Washington University* v. *Rouse* (1869) 8 Wall (75 U. S.) 439, relied upon by appellant are likewise distinguishable from the present case. In both cases *specific* institutions were *specially* chartered, one for religious purposes, the other for educational purposes, with exemptions from taxation. Moreover, it is to be specially noted that the act of incorporation in each case provided that such charters should not be subject to alteration, suspension and repeal at the discretion of the legislature. Obviously, in those two cases, the legislature had expressly surrendered its right to change the charters of those institutions in any particular, and intended to be bound thereby. In the case at issue, the statute does not

specially charter one institution and exempt it from taxation, but provides for the incorporation under such statute of any and all institutions which organize as foundation or holding companies for religious, educational or charitable purposes. Also there is no provision in such statute that the Indiana Legislature shall have no authority to alter, suspend and repeal any provision of such statute. The foregoing elements distinguish the case now before this court from the two cases above discussed.

In the case of *Northwestern University* v. *People* (1878) 99 U. S. 309, 25 L. Ed. 387, it appeared that the exemption from taxation in the statute specially chartering Northwestern University provided that the property should so remain exempt *forever* from taxation. This indicates a legislative intent to contract which is certainly not present in the case now before this court. To the same effect is the case of *St. Anna's Asylum* v. *New Orleans* (1881) 105 U. S. 362; 26 L. Ed. 188. There was a case of another institution *specially chartered* by the legislature with a provision for a tax exemption, *any law to the contrary notwithstanding.*

Each of the foregoing cases relied upon by appellant contain important elements, not present in this case, which show that the legislature in those cases did intend to make a contract. No such intention is indicated in the case now before this court.

C

To Constitute a Valid Irrevocable Contract of Exemption From Taxation There Must Be Shown a Clear Intention to Do So and in Case of Ambiguity This Court Will Follow the Decision of the State Court Unless Manifestly Wrong.

It has long been established by the decisions of this Court that contracts of tax exemptions must be clearly proved

and the intention shown, and if there is any doubt on the matter, such doubt will be resolved in favor of the State.

Seton Hall College v. *Village of S. Orange,* 242 U. S. 100, 106;

Providence Bank v. *Billings,* 4 Pet. (29 U. S.) 514, 560;

Wells v. *Savannah* (1900) 181 U. S. 531, 539, 540;

Puerto Rico v. *Russell & Co.* (1941) 315 U. S. 610, 624;

Chicago Theological Seminary v. *Illinois* (1903) 188 U. S. 662, 672.

It is also well settled that this Court will lean toward agreement with the State Court on their construction of the statutory provision granting the tax exemption unless such construction is manifestly wrong.

Hale v. *Iowa Bd. of Assessment,* 302 U. S. 95, 82 L. Ed. 72;

New York ex rel. Clyde v. *Gilchrist,* 262 U. S. 94, 67 L. Ed. 883;

Chicago Theological Seminary v. *Illinois* (1903) 188 U. S. 662, 47 L. Ed. 641.

In the case now before this Court the Indiana Supreme Court reviewed the legislative history of the exemption claimed by appellants in this case and the prior decisions of the appellate courts in Indiana interpreting such statutes, and pointed out that such exemptions did not constitute contracts but only indicated a course of conduct to be pursued by the legislature until its views of such policy changed. (Opinion of Indiana Supreme Court attached to appellants' Petition for Appeal).

Such a construction by the Indiana Supreme Court should be followed by this Court unless manifestly wrong, as indicated by the cases last cited above.

Summary

As heretofore shown, the decision of the Supreme Court of Indiana was made in strict accord with previous decisions of this Court and there is no valid basis for distinguishing this case from the decisions in which this Court established such principles. Consequently, there is no substantial Federal question involved, and thus appellees' motion to dismiss or affirm, filed herewith, should be sustained.

(Signed) CLEON H. FOUST,
Attorney General of Indiana,
FRANK E. COUGHLIN,
1st Assistant Attorney General,
WINSLOW VAN HORNE,
Deputy Attorney General,
KARL J. STIPHER,
Deputy Attorney General,
Attorneys for Appellees.

LOUIS B. EWBANK,
Of Counsel.

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Appellees.

MOTION TO DISMISS APPEAL OR AFFIRM DECISION OF STATE COURT

Now come appellees, Ralph F. Moore, as Auditor of Marion County, Indiana; Frank P. Huse, as Treasurer of Marion County, Indiana; Victor R. Jose, Assessor of

Marion County, Indiana; Roy T. Combs, Township Assessor of Center Township, Marion County, Indiana; Otto Wulfman, Peter A. Beczkiewicz and Walter Kleve, constituting the State Board of Tax Commissioners of the State of Indiana, and move to dismiss the appeal herein on the ground that the case presents no substantial Federal question; and they further move, if the motion to dismiss is not granted, that this Court affirm the decision of the Supreme Court of the State of Indiana on the ground that the questions which the decision of this cause depends are so unsubstantial as to need no further argument, all as appears in the Statement of Grounds Making Against the Jurisdiction of this Court filed herewith.

(Signed) CLEON H. FOUST,
Attorney General of Indiana,
FRANK E. COUGHLIN,
First Deputy Attorney General,
WINSLOW VAN HORNE,
Deputy Attorney General,
KARL J. STIPHER,
Deputy Attorney General,
Attorneys for Appellees.

(Signed) LOUIS B. EWBANK,
Of Counsel.